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July 11, 2001

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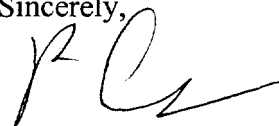
Re: Application by Verizon Pennsylvania, Inc., Verizon Long Distance, Verizon Enterprises Solutions, Verizon Global Networks, Inc., and Verizon Select Services, Inc., for Authorization to Provide In-Region InterLATA Services in Pennsylvania, CC Docket No. 01-138

Dear Ms. Salas:

Enclosed for filing in the above-referenced proceeding pursuant to the Commission's June 21, 2001 Public Notice Requesting Comments are an original, one paper copy, and a diskette copy of the Comments of Broadslate Networks, Inc., CTSI, Inc., and XO Communications, Inc.

Please date stamp and return the enclosed extra copy of this filing in the self-addressed, postage prepaid envelope provided. Should you have any questions concerning this filing, please do not hesitate to call the undersigned.

Sincerely,



Robin F. Cohn


Enclosures

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CERTIFICATE OF SERVICE

I hereby certify that on July 11, 2001, I caused to be served upon the following individuals the Comments of Broadslate Networks, Inc., CTSI, Inc., and XO Communications, Inc. in CC Docket 01-138:



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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
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Application of Verizon Pennsylvania, Inc.,)	
Verizon Long Distance, Verizon Enterprises)	CC Docket No. 01-138
Solutions, Verizon Global Networks, Inc., and)	
Verizon Select Services Inc. for Authorization)	
To Provide In-Region, InterLATA Services)	
in Pennsylvania)	

**COMMENTS OF
BROADSLATE NETWORKS, INC., CTSI, INC.
AND XO COMMUNICATIONS, INC.**

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TABLE OF CONTENTS

SUMMARY.....	ii
I. IN CONTRAVENTION OF CHECKLIST ITEMS 4 AND 5, VERIZON DOES NOT PROVIDE NONDISCRIMINATORY ACCESS TO HIGH CAPACITY LOOPS AND TRANSPORT.....	3
A. Legal Standard.....	4
B. Verizon Frequently Fails to Provide DS-1 UNEs in a Timely Manner.....	5
C. Verizon is Attempting to Avoid its Obligation to Unbundle High Capacity Facilities.....	6
D. Verizon is Erecting Artificial Obstacles to Utilizing EELs.....	13
II. VERIZON DOES NOT PROVIDE NONDISCRIMINATORY ACCESS TO WHITE PAGES DIRECTORY LISTINGS IN VIOLATION OF CHECKLIST ITEMS.....	14
A. Legal Standard.....	14
B. Verizon Has Consistently Failed to Include Complete and Accurate Directory Listings for CLEC customers.....	15
III. VERIZON DOES NOT COMPLY WITH CHECKLIST ITEM 13.....	25
A. Legal Standard.....	25
B. Verizon is Improperly Attempting to Circumvent its Reciprocal Compensation Obligations.....	26
IV. CONCLUSION.....	29
EXHIBIT A - Declaration of Craig Plue on Behalf of XO Communications, Inc.	
EXHIBIT B - May 21, 2001 Letter from counsel for AT&T to the Honorable Jaclyn Brilling, <i>Verizon Special Services Investigation</i> , Case No. 00C-2051 (NY PSC)	
EXHIBIT C - Declaration of Ronald L. Reeder on behalf of CTSI, Inc.	
EXHIBIT D – June 13, 2001 Letter from Executive Secretary, Maryland Public Service Commission, to counsel for Core Communications and Verizon Maryland, Inc.	

SUMMARY

Joint Commenters Broadslate Networks, Inc., CTSI, Inc., and XO Communications, Inc., strongly disagree with Verizon's overblown and enthusiastic claim in the first sentence of its Application that "The local market in Pennsylvania is open, the checklist is satisfied, and consumers are now entitled to the enormous benefits that experience has shown will result from Verizon's entry into the long-distance business." Even a cursory review of Verizon's Application reveals the substantial deficiencies that lay beneath the surface of Verizon's flippant statement, and it is clear that denial of Verizon's request to provide interLATA services in Pennsylvania under Section 271 of the Act is warranted.

Joint Commenters address several critical areas of Verizon's performance which conclusively demonstrate that any favorable action on Verizon's Application by the Commission at this time would be premature and inappropriate. These Comments establish that Verizon has clearly failed to meet the requirements of Competitive Checklist Items 4, 5, 8, and 13. As is fully explained herein, Verizon's Application is fatally deficient for several reasons. First, Verizon does not provide nondiscriminatory access to high capacity loop and transport facilities (Checklist Items 4 and 5). Verizon's shortcomings in this area include the failure to provide DS-1 UNEs in a timely manner, improper attempts to evade its legal obligations to unbundle high capacity facilities to requesting CLECs, and the imposition of artificial and improper obstacles to the utilization of EELs.

Second, Verizon does not provide nondiscriminatory access to white pages directory listings in derogation of Checklist Item 8. Verizon has consistently failed to provide accurate directory listings or has omitted listings requested by Pennsylvania CLECs for their end-user customers, and its defective performance demonstrates a pattern of actions and omissions that

delays, impedes and blocks competitors' entry into the local exchange market. Without greater automated processing of CLEC white pages listings by automated systems that reduce the possibility of error resulting from the manual entry of such listings, Verizon's Application should not be granted. The Commission should likewise find that no favorable action on Verizon's request is appropriate before implementation of a performance metric that tracks the accuracy of directory listings, and before Verizon is liable for substantial penalties for violation of the metric.

Third, Verizon is in violation of Checklist Item 13 due to its anticompetitive efforts to sidestep its reciprocal compensation obligations under the Act. Verizon's Application should not be granted until Verizon ceases its attempts to unilaterally modify the terms of existing interconnection agreements in accordance with its own incorrect interpretation of this Commission's recent reciprocal compensation ruling.

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Solutions, Verizon Global Networks, Inc., and)	
Verizon Select Services Inc. for Authorization)	
To Provide In-Region, InterLATA Services)	
in Pennsylvania)	

**COMMENTS OF
BROADSLATE NETWORKS, INC., CTSI, INC.
AND XO COMMUNICATIONS, INC.**

Broadslate Networks, Inc. ("Broadslate"), CTSI, Inc. ("CTSI"), and XO Communications, Inc. ("XO"),¹ (collectively, "Joint Commenters") submit these comments concerning the above-captioned Application by Verizon Pennsylvania, Inc. ("Verizon PA"), Verizon Long Distance, Inc., Verizon Enterprise Solutions, Verizon Global Networks, Inc., and Verizon Select Services Inc. (collectively, "Verizon" or "Applicants") for Provision of In-Region, InterLATA Services in Pennsylvania filed June 21, 2001 ("Application").² For the reasons stated herein, the Federal Communications Commission ("Commission") should deny the Application because Verizon has failed to demonstrate that it has complied with the requirements of Competitive Checklist Items 4, 5, 8 and 13.

¹ XO Pennsylvania, Inc., XO's operating entity in Pennsylvania, is a wholly-owned subsidiary of XO Communications, Inc.

² *Comments Requested on the Application By Verizon Pennsylvania, Inc. For Authorization Under Section 271 of the Communications Act To Provide In-Region, InterLATA Service in the State of Pennsylvania, Public Notice*, CC Docket No. 01-138, DA 01-1486 (rel. June 21, 2001).

The Joint Commenters are competitive local exchange carriers (“CLECs”) that provide telephone and other telecommunications services to customers in Pennsylvania using a combination of their own facilities and unbundled network elements, including high capacity loops and dedicated interoffice transport purchased from Verizon. The Joint Commenters also rely upon Verizon for provision of white pages directory listing information for their customers in Pennsylvania.³ Finally, each of the Joint Commenters has entered into an interconnection agreement with Verizon under which the parties compensate each other for the exchange of local traffic in Pennsylvania.

Broadslate provides broadband Internet access and high-speed data communications services to small and medium sized businesses in Tier II, III, and IV cities in ten Mid-Atlantic and Southeast states, including Pennsylvania. Broadslate utilizes symmetrical digital subscriber line (“SDSL”) and DS1 high capacity circuits to provide service to its customers.

CTSI provides competitive local exchange services to both residential and business customers in Pennsylvania and provides exchange access services to interexchange carriers (“IXCs”) that provide long distance service to CTSI’s local service customers. CTSI has its own facilities in certain areas of Pennsylvania, but relies upon Verizon for UNEs and other facilities to the extent necessary to expand its service offerings.

XO is a full facilities-based competitive local exchange carrier (“CLEC”) providing local service throughout the central and eastern service territory of Verizon-Pennsylvania. XO connects customers in Pennsylvania by a modern fiber optic network covering more than 700

³ Both CTSI and XO were active participants in the Pennsylvania Public Utility Commission’s (“PUC”) review of Verizon’s Section 271 request. *See Consultative Report on Application of Verizon Pennsylvania, Inc., for FCC Authorization to Provide In-Region, InterLATA Service in Pennsylvania*, Docket M-00001435 (Pa. PUC).

route miles. XO has central office switches in place in Philadelphia, Allentown and Harrisburg to provide a full range of local and long distance services. XO has also developed enhanced metro networks in Pennsylvania by deploying Metropolitan Area Networks ("MANS") in Philadelphia, Allentown, Bethlehem, Lancaster, Scranton and Harrisburg. These cities are interconnected to provide Wide Area Network ("WAN") service. Currently, XO connects in Pennsylvania to all of the major IXC's and fifteen Verizon central offices for collocation services.

I. IN CONTRAVENTION OF CHECKLIST ITEMS 4 AND 5, VERIZON DOES NOT PROVIDE NONDISCRIMINATORY ACCESS TO HIGH CAPACITY LOOPS AND TRANSPORT

As explained below, Verizon fails to provide DS-1 UNEs in a timely manner. More importantly, however, Verizon's poor provisioning is only one facet of an apparently concerted policy to deny CLECs reasonable and nondiscriminatory provisioning of DS-1 UNEs. First, Verizon frequently refuses to provide DS-1 UNEs on the basis of "lack of facilities." This practice is inherently problematic in that the standards for denying DS-1 UNEs on this basis are essentially undefined. Second, Verizon has recently modified its "lack of facilities" policy without state approval so that the scope of circumstances in which it will deny CLECs DS-1 UNEs has been greatly expanded. CLECs are then forced to obtain the necessary functionality in order to provide competitive services by purchasing special access, the provisioning of which is essentially unsupervised because this Commission has refused to adopt provisioning standards for special access and which, moreover, is not available at TELRIC prices. Further, once the CLEC has obtained special access it is extremely difficult to convert it to UNEs as part of the EEL conversion process or otherwise. For all these reasons, Verizon's provisioning of DS-1 is unreasonable and discriminatory and violates Checklist items 4 and 5.

A. Legal Standard

Verizon is required to provide CLECs with DS-1 facilities for use as both high-capacity loop and transport facilities. In evaluating Verizon's performance for specific loop types such as DS-1 loops, the Commission must consider patterns of systemic performance disparities that have resulted in competitive harm or otherwise denied competing carriers a meaningful opportunity to compete.⁴ CLECs such as the Joint Commenters use DS-1 UNEs to reach small to mid-sized business in Tier II, III, and IV cities in order to provision affordable, competitive broadband service options. These facilities are often deployed by the Joint Commenters in areas that cannot be reached by xDSL services due to their distance from a central office or because the existence of a Digital Loop Carrier ("DLC") system impedes the deployment of xDSL. In such cases, a four-wire DS-1 loop allows a CLEC to expand its serviceable customer base by reaching those customers that cannot be served by xDSL. This DS-1 high capacity loop provides the only cost effective option for many CLECs to reach these otherwise unattainable customers and is an integral part of their business plans. The Joint Commenters' experience is that there is rarely, if ever, an alternative high capacity facility available to serve small to medium sized businesses in smaller Tier II, III, and IV cities. In addition, it is neither practical nor cost-effective to build such "last mile" facilities to each customer they serve.

DS-1 circuits can also be used to provide unbundled local transport. Section 271(c)(2)(B)(v) of the competitive checklist requires a BOC to provide "[l]ocal transport from the trunk side of a wireline local exchange carrier switch unbundled from switching or other

⁴ *Application of Verizon New England Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions) and Verizon Global Networks, Inc. for Authorization to Provide In-Region, InterLATA Services in Massachusetts*, CC Docket No. 01-9, Memorandum Opinion and Order, FCC 01-130, ¶ 122 (Apr. 16, 2001) ("*Verizon MA 271 Order*").

services.”⁵ The Commission has required that BOCs provide both dedicated and shared transport to requesting carriers.⁶ This Commission has also required that the ILEC must provide all technically feasible capacity related transmission services, including DS-1 transport.⁷

B. Verizon Frequently Fails to Provide DS-1 UNEs in a Timely Manner

A critical component in evaluating Verizons’s performance in providing DS-1 facilities is whether Verizon is providing the facilities in a timely manner.⁸ Verizon’s own performance data shows that Verizon is not providing these services to competitors at parity to its retail services. In February, March, and April of this year, the average installation interval for DS-1 loops was 19.16 days, as opposed to Verizon’s retail performance, which was 15.61 days.⁹ During the same period, Verizon’s data also shows a disparity for the missed appointment metric for DS-1 loops.¹⁰ Verizon reported similar disparate results for its provisioning of interoffice facilities.¹¹ Pennsylvania PUC Commissioner Fitzpatrick noted that the data showed significant substandard performance with respect to loops and transport.¹² He noted his preference that Verizon’s

⁵ 47 U.S.C. § 271(c)(2)(B)(v).

⁶ *Application by BellSouth Corporation, et al., Pursuant to Section 271 of the Communications Act of 1934, as Amended, to Provide In-Region, InterLATA Services in Louisiana*, CC Docket No. 98-121, Memorandum Opinion and Order, ¶ 201 (1998).

⁷ *In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, FCC 99-238, ¶ 308 (1999)(“UNE Remand Order”).

⁸ *Verizon MA 271 Order* at ¶¶ 156, 209.

⁹ CC Docket No. 01-138, *Verizon Application* at 38 n.38; Declaration of Paul A. Lacouture and Virginia P. Rueterholz at ¶ 142. (“*Lacouture/Rueterholz Declaration*”).

¹⁰ *Lacouture/Rueterholz Declaration* at ¶¶ 148-149.

¹¹ *Id.* at ¶ 273.

¹² PA PUC Docket No. M-00001435, Dissenting Statement of Commissioner Terrance J. Fitzpatrick at 4 (June 6, 2001) (“*Fitzpatrick Dissent*”).

performance be more carefully reviewed prior to the Pennsylvania PUC endorsing the application.¹³ His suggestion was not followed by the PUC, which recommended that Verizon's application be granted. Instead, with regard to both high-capacity loops and transport, Verizon attempts to camouflage the size of the problem by narrowing the scope of the orders covered by the metrics. By seeking to exclude orders from the metrics where Verizon has deemed "no facilities available," Verizon is attempting to improve its performance by changing the definition of what is covered by the metrics."¹⁴ In fact, Verizon goes as far as to recast its applicable performance by excluding those orders for which there were "no facilities available."¹⁵

C. Verizon is Attempting to Avoid its Obligation to Unbundle High Capacity Facilities

Verizon's attempts to exclude from consideration those orders where it unilaterally determines there is a "lack of facilities" must be seen for what it is. Verizon is attempting to shield from consideration a host of discriminatory, anti-competitive practices that it sweepingly and vaguely asserts result from a "lack of facilities." It is also trying to artificially improve its poor performance by asserting that CLEC orders associated with a "lack of facilities" are not covered under applicable performance metrics.

The first type of problem associated with "lack of facilities" is what is referred to in the industry as a "blind FOC." Verizon is notorious for issuing an initial firm order commitment ("FOC") date without determining whether facilities are actually available to complete the order. Verizon will later inform the CLEC, often on the due date, that the order will be delayed because

¹³ *Id.* at 5.

¹⁴ *Lacouture/Ruesterholz Declaration* at ¶¶ 143, 147; ¶¶ 274, 278

¹⁵ *Id.* at ¶¶ 144, 149, 274.

Verizon does not actually have facilities available to provision service on time. The new FOC date issued by Verizon is often months away. This practice creates unnecessary timing and scheduling problems for the CLEC, its customer, and the customer's vendors. It denies the CLEC the opportunity to earn revenue and it lessens consumer confidence in the CLEC's ability to provide local service.

A second issue associated with Verizon's unilateral determination that "facilities are unavailable" for a particular order is Verizon's refusal to construct any new UNE facilities. Verizon has rejected numerous CLEC high capacity UNE orders on the grounds that there are no UNE facilities available and that it is not required to construct new UNE facilities. Verizon instead directs the CLEC to cancel its UNE order and resubmit the order as a special access order. Verizon will, of course, construct new special access facilities at non-TELRIC based pricing. Through this practice, Verizon forces the CLEC to pay higher, non-TELRIC rates for facilities that should have been made available at UNE rates.

The scope of this problem cannot be understated because there is virtually no way for a CLEC to scrutinize Verizon's unilateral determination that facilities are unavailable for a particular order. In this connection, Verizon has recently informed CLECs that it will employ a new stricter policy of determining when DS-1 UNE facilities are available. Under this policy, the range of UNE orders that Verizon will reject as "facilities unavailable" is greatly increased, resulting in an ever-growing number of orders that Verizon will only process as special access orders.¹⁶

¹⁶ See Declaration of Craig Plue on Behalf of XO Communications ("Plue Declaration") ¶ 4, attached hereto as Exhibit A.

The new policy embodies a far more restrictive definition of when facilities are available. Significantly, under Verizon's new policy, the term "facility" has been broadened by Verizon to include not only the loop, but the electronics required to condition the loop to meet DS-1 specification. In addition, under the new policy, it is the Joint Commenters understanding that Verizon will only provide unbundled DS-1 loops where all the equipment necessary to provide such loops is already in place, including equipment at the customer location. Thus, this effectively restricts the ability of CLECs to get DS-1 loops to situations where the customer either has DS-1 service, or had DS-1 service, and all the necessary equipment is still in place. It is the Joint Commenters understanding that prior to implementation of this new policy, Verizon did not reject DS-1 UNE orders for lack of facilities where either loop conditioning or existing customer premises equipment was at issue. Now, apparently, Verizon will not purchase any new equipment to provide UNE DS-1 loops.

Indeed, although Verizon admits that it in recent months it has been unable to meet requests for DS-1 UNEs because facilities are not available, Verizon nonetheless requests that these shortfalls not be held against it.¹⁷ When combined with Verizon's new policy, it is clear that Verizon's conduct represents a coordinated effort to deny CLECs access to high-capacity loops and transport to the detriment of local competition while shielding this practice from consideration under applicable performance metrics.

¹⁷ Verizon Application at 38, n.38; Lacouture/Ruesterholz Declaration at ¶¶ 142-143 ("These reported measures do not provide an accurate picture of Verizon's performance because they include orders that Verizon could not provision on the due date because it lacked the necessary facilities. Rather than reject orders where no facilities are available, Verizon takes additional steps to make facilities available."). See also Plue Declaration ¶¶ 4-6. Verizon's "additional steps" consist of offering special access facilities in lieu of UNEs in order to avoid its unbundling, TELRIC pricing and other obligations. The Commission should not permit Verizon to avoid its regulatory obligations in this manner.

For example, where such a CLEC order is designated as a “facility not available,” and a wholesale customer orders UNE special facilities,¹⁸ Verizon refuses to build new UNE special facilities on the grounds that under its state tariff it is not required to undertake such construction.¹⁹ Verizon has informed carriers that if they withdraw the order for the DS-1 UNE facility and resubmit it as a special access order, Verizon will build the necessary facilities.²⁰

Significantly, while Verizon consistently refuses to build UNE facilities, Joint Commenters are not aware that Verizon has ever refused to build special access facilities.²¹ The advantage of designating these orders as special access is manifest for Verizon. Verizon asserts that such a designation allows it to avoid performance standard obligations associated with UNEs and, more significantly, removes this practice from consideration under Section 271.²² In addition, special access services do not have to be provided at TELRIC prices.²³ Also, once the facilities are ordered as special access services, Verizon makes it impractical, costly, and difficult to convert these facilities back to UNEs.²⁴

¹⁸ Verizon categorizes UNE DS-1 facilities as “special services.” See *Verizon Application*, Declaration of Elaine M. Guerard, Julie A. Canny, and Marilyn C. Devito at ¶ 53.

¹⁹ See *Verizon Special Services Investigation*, New York Public Service Commission Case No. 00-C-2051, Letter from Counsel for AT&T to the Hon. Jaclyn Brilling at 1-2 (May 21, 2001) (“*AT&T Letter*”) (attached hereto as Exhibit B). See also Plue Declaration ¶ 5.

²⁰ *AT&T Letter* at 1-2; Plue Declaration ¶ 6-7.

²¹ Plue Declaration ¶ 7.

²² *In the Matter of Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the State of New York*, FCC 99-404, CC Docket 99-295, Memorandum Opinion and Order at ¶ 340 (December 22, 1999)(“*BA-NY 271 Order*”),

²³ *AT&T Letter* at 2; Plue Declaration ¶ 8.

²⁴ For instance, the CLEC may be subject to disconnection and reconnection/installation charges, as well as potential interruption and/or delay due to Verizon’s implementation of the conversion. Plue Declaration ¶¶ 12-14.

Verizon's implementation of this policy comes on the heels of the petition by Verizon and other ILECs requesting that this Commission remove high-capacity loops and transport from the ILECs' unbundling requirements.²⁵ This new practice suggests that Verizon is not content to wait while the Commission deliberates this issue. Instead, it is attempting to unilaterally convert large numbers of UNE high-capacity orders to special access by applying a new set of criteria to what constitutes "facilities not available."

This circumvention of the Commission's rules should cause the Commission to reevaluate its blanket exclusion of special access services from Section 271 Competitive Checklist considerations. The Commission based its exclusion on the following:

Although dedicated local transport and the interoffice portion of special access are generally provided over the same facilities, they differ in certain other respects. A number of these parties, however, assert that the checklist requirements focus on the provision of physical facilities, not the regulatory classifications that apply. We do not believe that checklist compliance is intended to encompass the provision of tariffed interstate access services simply because these services use some of the same physical facilities as a checklist item.²⁶

Verizon's new policy shows how thin and transparent the line is between interoffice facilities and special access facilities and how this regulatory classification can be manipulated. Verizon's new policy essentially requires CLECs to order as special access facilities those facilities they would otherwise order as UNEs. Such a forced reclassification essentially removes provisioning of these facilities from regulatory oversight.²⁷

²⁵ CC Docket No. 96-98, Joint Petition of BellSouth Telecommunications, Inc., SBC Communications, Inc. and Verizon Telephone Companies (April 5, 2001).

²⁶ *BA-NY 271 Order* at ¶ 340.

²⁷ *Plue Declaration* ¶ 8-9.

The situation is particularly problematic given the difficulties CLECs have been experiencing with regard to the provisioning of special access services. For instance, in New York and Massachusetts proceedings have been initiated to address Verizon's continual failure to meet installation intervals for special access facilities.²⁸ However, in Massachusetts, Verizon has challenged the authority of the Massachusetts Department of Telecommunications and Energy to regulate the vast majority of special access facilities. Since this Commission's rules classify special access facilities on which traffic is more than 10% interstate as interstate facilities subject to federal jurisdiction, most special access facilities are subject to federal authority even when these facilities carry a significant portion of intrastate traffic.²⁹ Verizon has argued that this gives this Commission exclusive jurisdiction over these mixed-use facilities and denies jurisdiction to state commissions over such facilities.³⁰ This argument endeavors to preclude any attempts by state commissions to regulate the provisioning of the vast majority of special access service orders.³¹ Thus, such facilities may fall into a regulatory "black hole" if a state finds it has no jurisdiction over mixed access facilities and this Commission declines to set standards for special access provisioning. This unfortunate reality provides even more of a

²⁸ *Re Verizon New York Inc.*, New York Public Service Commission Case Nos. 00-C-2051 and 92-C-0665, Order Instituting Proceeding at 1 (November 24, 2000) ("*NY Special Access Order*"); *Investigation by the Department of Telecommunications and Energy on its own motion pursuant to G.L. c. 159, §§ 12 and 16, into Verizon New England Inc. d/b/a Verizon Massachusetts' provision of Special Access Services*, Massachusetts Department of Telecommunications and Energy Docket No. 01-34, Vote and Order to Open Investigation at 2 (March 14, 2001) ("*MA Special Access Order*").

²⁹ *See, AT&T Communications of the Midwest, Inc. v. U S WEST Communications, Inc.*, Minnesota Public Utilities Commission Docket No. P-421/CC-99-1183, Order at 4 (August 15, 2000).

³⁰ *See, MA DTE Docket No. 01-34, AT&T Communications of New England, Inc.'s Response to Verizon's Comments at 2* (April 30, 2001) ("*AT&T MA Response*").

³¹ *AT&T MA Response at 2.*

perverse incentive for Verizon to transform additional UNE special services orders into special access orders by using the “facilities not available” designation.

The Commission should not permit this attempted circumvention of its unbundling rules and its application of the Section 271 competitive checklist. The disputed DS-1 orders are orders that would normally be considered as UNE orders, and treated as such, save for Verizon’s newly announced policy. Prior to any favorable action on this Application, Verizon should be required either to cease its policy or have its provision of special access services be subjected to appropriate performance standards and remedies and checklist scrutiny.

Moreover, Verizon offers DS-1 UNEs pursuant to its state tariffs. To the best of the Joint Commenters knowledge, Verizon has not revised its Pennsylvania tariff to reflect its “no facilities” policy. The Joint Commenters submit that, at a minimum, Verizon may not implement its new sweeping “no facilities” policy without first amending its state tariff after appropriate state review. In this connection, Verizon’s previous practice reflected its prior interpretation of the existing state tariff and it should be held to that interpretation until it explicitly seeks to revise its prior practice and policy, and justify a new policy through the state tariff review process. The fact that Verizon has not done so means that its provision of DS-1 UNEs under its new policy has not been reviewed or approved by the state commission. For this reason, and the reasons described above, the Commission should deny the Application because Verizon has failed to show adequate provisioning of DS-1 UNEs.

It is also worth noting that reportedly Verizon has initiated its new DS-1 provisioning policy in order to conform its practices across former Bell Atlantic and GTE territories. During regulatory evaluation of the proposed Bell Atlantic/GTE merger, many commenters pointed out

that the merger would not serve the public interest because GTE's poor practices in a number of respects might set the standard for the combined company, rather than having the relatively more pro-competitive Bell Atlantic standards predominate.³² Verizon's new policy concerning lack of facilities for DS-1 UNEs is a regrettable confirmation of those concerns. The Commission should now examine whether it must require Verizon to terminate this new policy pursuant to the Commission's continuing authority over the terms and implementation of the Bell Atlantic/GTE merger, and in accordance with its review of the instant Application.

D. Verizon is Erecting Artificial Obstacles to Utilizing EELs

Verizon's practices with respect to high capacity circuits and special access facilities continues to, force many CLECs to order private line or special access facilities out of Verizon's tariffs in order to obtain the high capacity facilities needed to serve their local end-user customers.³³ Verizon then compounds the problem by either refusing outright to convert such special access circuits to EELs or by imposing significant, effectively prohibitive termination charges on the conversion.

For example, although a CLEC may have been forced by Verizon's discriminatory facilities policy to purchase a DS-3 from Verizon's Special Access Tariff (FCC Tariff No. 1), it may actually be using one or more DS-1s within that DS-3, combined with a multiplexer, to connect to a loop in order to provide dial tone for an end user customer.³⁴ When requested to convert the existing combination of DS-1(s) and loop into an EEL, Verizon refuses to do so and,

³² *In the Matter of GTE Corporation, Transferor, and Bell Atlantic, Transferee, for Consent to Transfer of Control*, CC Docket No. 98-184, Comments of Allegiance Telecom, Inc. at 4-6 (March 1, 2000).

³³ Plue Declaration ¶ 12.

³⁴ Plue Declaration ¶ 11.

instead, suggests that the CLEC order a separate, stand-alone MUX/DS-1 circuit.³⁵ Verizon's proposed "solution" not only creates an interruption in service to the customer, but increases the CLEC's costs.³⁶

Additionally, even where Verizon is willing to permit a CLEC to convert from special access to UNEs, Verizon assesses significant penalties for terminating the special access services.³⁷ Verizon's imposition of terminating penalties is unjust and unreasonable for several reasons. First, because the CLEC requesting conversion would still be using and paying for the facilities as UNEs rather than tariffed facilities, no termination would occur. Second, Verizon would be recovering its cost through the UNE rate and should not be permitted to obtain an additional recovery through an artificial termination charge. Finally, through its discriminatory policies and poor provisioning, Verizon has already forced the CLEC to purchase more costly special access facilities rather than the UNEs originally requested by the CLEC. Imposing a termination penalty on the CLEC for seeking to exercise its rights to obtain UNEs violates Verizon's obligation to provide UNEs pursuant to reasonable terms and conditions.

II. VERIZON DOES NOT PROVIDE NONDISCRIMINATORY ACCESS TO WHITE PAGES DIRECTORY LISTINGS IN VIOLATION OF CHECKLIST ITEM 8

A. Legal Standard

Section 271(c)(2)(B)(viii) of the Act (Checklist Item 8) requires Verizon to provide CLECs and their customers nondiscriminatory access to white pages directory listings in the same manner that Verizon provides such listings for its own customers. Verizon has failed to

³⁵ Plue Declaration ¶ 11.

³⁶ Plue Declaration ¶ 11.

³⁷ Plue Declaration ¶¶ 12-14.

provide accurate directory listings or has omitted listings for many of the Joint Commenters' customers in Pennsylvania, as is required to comply with Checklist Item 8. Thus, contrary to Verizon's claim that it is in full compliance with the checklist set forth in Section 271(c)(2)(B) of the Act, the facts demonstrate that Verizon has failed to meet its obligations under Checklist Item 8 to provide directory listings at parity with the manner in which Verizon provides these services to or for its own retail customers.

B. Verizon Has Consistently Failed to Include Complete and Accurate Directory Listings for CLEC Customers

Based on the Joint Commenters' experience and as explained herein and in the attached declarations of Craig Plue and Ronald L. Reeder, Verizon's performance with respect to directory listing errors has fallen far short of the level that would demonstrate Verizon is providing nondiscriminatory white pages access and services to its competitors.³⁸ Verizon has failed to include or has included inaccurate directory listings for hundreds of the Joint Commenters' customers despite every effort by the Joint Commenters to ensure that Verizon utilized the correct information in its directory listings for CLECs.³⁹ In fact, Verizon's own analysis of the accuracy of its customers directory listings when compared to Verizon's performance with respect to CLEC listings demonstrates that Verizon is not providing white pages directory listings to CLECs and their customers at parity with the manner in which Verizon provides such listings to its own retail customers.

Verizon claims to have adequate procedures in place to ensure that directory listings information for CLEC customers is included in Verizon's database in an accurate and reliable

³⁸ Declaration of Ronald L. Reeder on Behalf of CTSI, Inc. ("Reeder Declaration"), attached hereto as Exhibit C ¶ 3; Plue Declaration ¶ 18.

³⁹ Reeder Declaration ¶ 3,5; Plue Declaration ¶ 20.

manner.⁴⁰ Verizon even describes the steps it claims to follow to verify a CLEC's customer's directory information. Contrary to these claims, the Joint Commenters have been harmed by the manner in which Verizon processes their directory listing orders.

Many of the directory listings errors Verizon commits are the result of Verizon's arbitrary threshold for automatic or "flowthrough" processing of CLEC orders. Although Verizon's ordering process produces directory listings errors for both residential and business customers, the discriminatory effect of Verizon's directory listings process is that it disproportionately results in more errors for facilities-based CLECs (such as the Joint Commentors) and their business customers than for CLECs utilizing UNE platform and resale, and for Verizon's own customers.

CLECs can submit directory listing orders to Verizon in two ways – as part of a Local Service Request ("LSR"), which may be for resale or include an order for UNEs, or as a stand alone Directory Service Request ("DSR"). In either case, the CLEC submits its order through Verizon's Web GUI or EDI; however, the manner in which Verizon processes the order depends on whether it meets Verizon's criteria for "flowthrough" or automatic processing.

A small percentage of these orders are automatically processed by Verizon's ordering system with no manual intervention. However, a majority of the orders, including orders that require directory listing changes, involve migration of a customer from Verizon's facilities to a CLEC's facilities, involve more than six lines, or are otherwise "complex" orders (*e.g.*, both voice and data) are manually processed by Verizon's National Marketing Center. In other words, a Verizon employee must retype the directory listing information from the LSR or DSR

⁴⁰ Verizon Application at 48; Lacouture/Ruesterholz Decl. ¶¶ 379, 381-382.

onto the Service Order before the directory listing information is transmitted to Verizon's directory listing organization, Verizon Information Services ("VIS"). This manual process introduces numerous typographical and other errors into the directory listing process and frequently results in omitted or inaccurate listings.⁴¹ As a result, a CLEC customer's directory listing information is often riddled with errors, causing the CLEC to expend a great deal of time and resources to identify and correct the errors prior to publication.⁴² It is the Joint Commenters' understanding that directory listing information for Verizon's own retail customers is not typed twice (once by the CLEC and once by Verizon), but is instead processed upon initial typing (by Verizon) and entered into Verizon's directory listing database.

Moreover, the problems inherent in Verizon's processing of directory listing orders affect both "as is" directory listings and "as specified" directory listings. Directory listings designated "as is" are those listings that the CLEC customer wishes to retain with no changes from the way in which they are listed in Verizon's directory. In contrast, directory listings that are "as specified" involve listings that the CLEC customer wants to change from the way in which they appear in Verizon's directory. Because an "as is" directory listing does not require any revisions, there is no plausible reason for Verizon's ordering process to result in omissions and errors, yet that is exactly what happens in many cases.

Under Verizon's current ordering process, an "as is" directory listing request is *not* automatically processed under several scenarios – for example, where the customer is migrated

⁴¹ See Reeder Declaration at ¶ 6; Plue Declaration at ¶¶ 18-19.

⁴² Reeder Declaration ¶¶ 8-10. The limited opportunity for review and correction of such errors combined with the short amount of time between the CLEC's first opportunity to review its directory listing information and the deadline for publication of the directory create additional burdens on CLECs and, in many cases, result in last minute corrections that often do not make it into the published directory. See *id.*

to the CLEC's network, utilizes more than six lines or has a "complex" order, or will be served over a UNE loop. In each of these cases, Verizon removes the customer's existing directory listing information from its database and manually retypes that information on the CLEC's service order for transmission to VIS.⁴³ As noted, this manual reentry process not only introduces the potential for numerous errors, but often results in omitted or inaccurate listings.

Directory listings that are "as specified" provide even greater opportunities for Verizon errors and omissions. Currently, all of these listings are manually retyped, even if the revision involves a minor change in only one line of the customer's listing.⁴⁴ If a CLEC submits an order and indicates that the directory listing is to be modified, *Verizon deletes the existing listing* and manually retypes the directory information from the CLEC's LSR or DSR. Again, the manual processing of CLEC orders introduces the possibility of error in the preparation of directory listing information on a CLEC's service order and requires the CLEC to expend significant time and resources to identify and correct such errors.

Verizon claims in its Application to have taken steps to minimize the manual retyping of directory listing orders.⁴⁵ However, the fact is that most of Verizon's alleged remedies are little more than offers to work towards possible future solutions, without any firm commitment as to a

⁴³ In contrast, an "as is" request that involves only resale service, local number portability, a UNE loop with number portability, or less than six lines, is automatically processed without manual intervention by Verizon personnel.

⁴⁴ Likewise, orders for new CLEC customers that were not previously served by Verizon must be completely retyped by Verizon's National Marketing Center personnel prior to transmission of the service order to VIS. Therefore, orders for new CLEC customers present a significantly greater possibility of being omitted or inaccurately listed in the white pages directory.

⁴⁵ See, e.g., Lacouture/Ruesterholz Decl. ¶ 408

date when they will be implemented.⁴⁶ Verizon's proposed establishment of a Quality Assurance Team and a Listing Verification Report Correction Team may offer some assistance to CLECs in correcting errors created through Verizon's manual ordering processing system,⁴⁷ but they will not eliminate or even mitigate the problems inherent in the process itself – the introduction of error through manual retyping of directory listing information.⁴⁸ In addition, Verizon's intended solutions are limited to "as is" directory listings, which, as noted above, represent only a portion of the directory listings errors Verizon commits. Finally, even if Verizon does implement its proposed remedies, the actual benefit of those remedies, if any, will not be realized by CLECs for many months or even years after their implementation because white pages directories are published only once a year.

Significantly, any actions Verizon takes to address white pages directory listings problems are of little use unless a performance metric is established to ensure that Verizon not only implements its offered solutions, but meets its obligations to provide nondiscriminatory access to white pages listings. A statement from Verizon that it "will endeavor" to address white pages issues at some uncertain future date is no more than an "illusory promise" which offers little comfort to CLECs unless there is rigorous oversight of Verizon's performance in the form of a performance metric to assess the accuracy of white pages directory listings⁴⁹ and significant penalties associated with failing to meet established deadlines. Verizon has every incentive to

⁴⁶ *Id.* ("Verizon will endeavor to implement this modification by the first quarter of 2002") (emphasis added). See Reeder Declaration ¶¶ 6-7.

⁴⁷ Given the limited amount of time permitted to CLECs to identify potentially hundreds of errors in thousands of directory listings and provide revisions to Verizon, as well as the time for Verizon to implement those revisions, the actual utility of Verizon's proposed teams is doubtful.

⁴⁸ Reeder Declaration ¶ 6.

⁴⁹ Reeder Declaration ¶ 7; Plue Declaration ¶ 19.

delay taking action that will provide a benefit to its competitors, especially if it receives Commission authority to provide long distance service in Pennsylvania based upon such an amorphous commitment to take some unspecified action at an uncertain date in the future. This Commission must ensure that Verizon is not only obligated to implement changes in its ordering process to address white pages issues, but that its performance with respect to directory listings is tied to a performance standard and that it is subject to substantial penalties if it does not meet the performance standard. The Joint Commentors urge the Commission to require such action **before** giving any favorable consideration to Verizon's Application.

Verizon conceded before the Pennsylvania PUC that it does not track directory listing information.⁵⁰ Indeed, Verizon's witness stated that Verizon does not track directory listing errors for directory listing information provided by CLECs or directory listing errors for directory listings related to its own retail customers.⁵¹ Clearly, if Verizon does not track its performance with respect to directory listings, Verizon has no persuasive basis upon which to claim that it is providing directory listings in a nondiscriminatory manner. Nor do its statements rebut the substantial issues cited by the Joint Commenters herein.

Verizon's admitted failure to track directory listing information on its own may be the reason that Verizon relied upon the wholly inadequate KPMG review Verizon cites in its Application. Specifically, Verizon cites KPMG's review of 156 directory listings as support for

⁵⁰ See, e.g., *Verizon Application*, Appendix B, Tab C, Sub-Tab 11 (March 1, 2001 Technical Conference Transcript, p. 32, line 6 to p. 33, line 11 (Savino)); *Verizon Application*, Appendix B, Tab C, Sub-Tab 20 (March 21, 2001 Technical Conference Transcript, p. 125, lines 6-20 (Savino)).

⁵¹ *Verizon Application*, Appendix B, Tab C, Sub-Tab 11 (March 1, 2001 Technical Conference Transcript, p. 32, lines 6-23); CTSI Exhibit No. 1.

its claim that it has complied with Checklist Item 8.⁵² Thus, Verizon's only "evidence" to support its claim of compliance with the Checklist requirements is a random sampling that represents approximately 3/100th of a percent of the total 475,000 CLEC and reseller listings in Verizon's database.⁵³ To put Verizon's "evidence" into perspective, the total number of directory listings utilized by KPMG in performing the test upon which Verizon relies is only slightly more (159 versus 110) than the number of errors Verizon admitted it made with respect to CTSI's and XO's directory listings for only 5 of the 108 Pennsylvania directories⁵⁴ and significantly less than the total number of errors CTSI and XO identified for only a few of their directories.⁵⁵

In a further effort to bolster its otherwise weak evidence of compliance, Verizon also attempts to demonstrate that CLECs are responsible for many of the directory listing errors identified by the Joint Commenters.⁵⁶ However, Verizon's claim is based upon its own self-serving analysis of evidence submitted by CTSI and XO in the state proceeding, which Verizon did not persuasively rebut.⁵⁷ In fact, in its analysis of directory listing errors demonstrated by CTSI and XO in the state proceeding, Verizon identified the majority of the errors as

⁵² *Lacouture/Ruesterholz Declaration* ¶ 399 (citing KPMG Final Report Release at 415 (TVV4) (App. B, Tab F2) ("KPMG Consulting reviewed 156 directory listings to determine if Verizon PA provisioned them correctly.")).

⁵³ *See Lacouture/Ruesterholz Declaration* ¶ 390 (identifying approximately 380,000 CLEC and approximately 95,000 reseller listings in Verizon's directory database as of April).

⁵⁴ *Compare Lacouture/Ruesterholz Declaration* ¶ 399 with Plue Declaration ¶ 18 and Reeder Declaration ¶ 3-4.

⁵⁵ *See Final Comments of CTSI, Inc.* at 5-9; *XO Communications, Inc. Brief and Final Comments* at 16-18.

⁵⁶ *Lacouture/Ruesterholz Declaration* ¶ 402.

⁵⁷ *See Final Comments of CTSI, Inc.* at 9-10; *Reeder Declaration* ¶ 5.

“unsubstantiated”, which according to Verizon meant that it did not have sufficient information to determine whether or not it was responsible for the error.⁵⁸

Moreover, in analyzing culpability for errors identified by CLECs in the state proceeding, Verizon took the position that if it could not identify the Purchase Order Number (“PON”) associated with the error, than the CLEC had provided the wrong number and the claim was therefore unsubstantiated,⁵⁹ despite the fact that Verizon admitted it could search and update directory listing information without the PON.⁶⁰ Thus, rather than performing a thorough analysis of each error, which in some cases would be as simple as comparing a listing in the 1999 directory with a listing in the 2000 directory, Verizon simply designated any error it could not conclusively determine to be a CLEC error as “unsubstantiated”.⁶¹ Given the incompleteness of Verizon’s analysis of the errors Joint Commenters CTSI and XO identified, Verizon’s unsupported claims about its performance assertions are hardly convincing proof that Verizon’s version of events should be accepted and that Verizon has demonstrated its compliance with Checklist Item 8. Furthermore, regardless of how an error appears on the Listing Verification Report (“LVR”), the fact remains that CLECs identify numerous directory listing errors on their

⁵⁸ *Verizon Application*, Appendix B, Tab C, Sub-Tab 20 (March 21, 2001 Transcript, p. 95, lines 5-9 (Savino); p. 110, line 18 to p. 111, line 3 (Savino); p. 134, lines 11-19 (Savino)).

⁵⁹ *Verizon Application*, Appendix B, Tab C, Sub-Tab 20 (March 21, 2001 Technical Conference Transcript, p. 140, line 14 to p. 141, line 7 (Savino)).

⁶⁰ *Verizon Application*, Appendix B, Tab C, Sub-Tab 20 (March 21, 2001 Technical Conference Transcript, p. 133, lines 7-11 (Savino)).

⁶¹ For example, during questioning at the March 21, 2001 technical conference, Verizon’s witness explained that an error related to a directory listing that was to remain “as is” (*i.e.*, no change from how the listing was published in Verizon’s directory) was identified as “unsubstantiated” because “we don’t have our records to go back to see whether the listing was in caption format prior to the change.” *Verizon Application*, Appendix B, Tab C, Sub-Tab 20 (March 21, 2001 Transcript, p. 136, lines 4-10 (Savino)).

LVR and provide corrective information to Verizon, yet Verizon consistently fails to correct those errors in the published directory.

Verizon also mischaracterizes the evidence adduced in the state proceeding by claiming that CTSI and XO admit that Verizon provides directory listings with 99% accuracy.⁶² In fact, rather than conceding any level of accuracy on the part of Verizon, the portion of CTSI's comments cited to by Verizon notes that the evidence (even as mischaracterized by Verizon) demonstrates that Verizon committed from 10 to 40 times as many directory listing errors with respect to CLEC and reseller listings than those it admitted committing for its own retail customers.⁶³ The inescapable conclusion is that Verizon discriminates in provision of access to white pages directory listings. Verizon's self-serving mischaracterizations of the evidence should be rejected as such.

Contrary to the impression Verizon would like to create that it provides CLECs with multiple opportunities to review their customers' directory listing information prior to publication,⁶⁴ the fact is that CLECs typically have only one practical opportunity after receipt of the LVR to review Verizon's proposed directory information for errors.⁶⁵ Approximately thirty business days prior to the closing date for a particular white pages directory, Verizon provides CLECs with an LVR containing all of the CLEC's customers' listings in the Verizon database

⁶² *Lacouture/Ruesterholz Declaration* ¶¶ 400 (citing Final Comments of CTSI, Inc. at 9).

⁶³ *Reeder Declaration* ¶ 4.

⁶⁴ *Lacouture/Ruesterholz Declaration* ¶¶ 393-397.

⁶⁵ In addition to the LVR, which only provides directory listing information in a spreadsheet format, some CLECs request that Verizon to provide copies of the directory page proofs prior to publication in order to have an opportunity to review the listing information as it will actually appear in the published directory. This additional review would also provide another opportunity to confirm whether Verizon has corrected omitted or inaccurate listings. In most cases, however, Verizon does not provide the requested page proofs, and Joint Commenters urge

for publication in the upcoming directory.⁶⁶ The LVR is in most cases, the only functional opportunity a CLEC has to review its directory listing information and provide revisions to Verizon before publication, as the final directory is based on the thirty-day LVR.⁶⁷

Upon receiving the LVR for their customers, Joint Commenters carefully review the information in the LVR, correct any incomplete, missing or inaccurate listings and promptly submit the updated information to Verizon.⁶⁸ It is not unusual for a CLEC to identify, and provide corrective information for, hundreds of errors in the listing information provided by Verizon. In many cases, despite Joint Commenters' efforts to ensure that Verizon has complete and accurate information for the Joint Commenters' customers, including providing revisions for errors identified in the LVR, Verizon fails to include accurate listings for the Joint Commenters' customers.⁶⁹ Despite the fact that Verizon attempts to shift the burden of producing accurate white pages listings to CLECs, the propriety of its white pages services should be measured by the extent to which Verizon itself produces accurate information, not by the result of CLEC efforts to correct Verizon's errors.

the Commission to require Verizon to commit to such production by requesting CLECs prior to making any favorable Section 271 finding.

⁶⁶ *Lacouture/Ruesterholz Declaration* ¶ 393.

⁶⁷ Contrary to Verizon's claim, the ability to view already published listings via the Verizon Web GUI or EDI (*Lacouture/Ruesterholz Declaration* ¶ 395) or search and sort directory listings in an electronic format (*Lacouture/Ruesterholz Declaration* ¶ 396) does not provide CLECs with an adequate opportunity to review the accuracy of their customers' listings or to provide updates or revisions those listings. The usefulness of these alleged opportunities to review listings is further reduced by the fact that Verizon's Web GUI is often down completely or access is slowed for days at a time. Verizon's apparent attempt to transfer responsibility for the accuracy of listings to CLECs who are expected to expend substantial resources reviewing every order submitted to Verizon for directory listing accuracy must be rejected. Verizon is the entity that actually publishes the directories and is thus in the best position to ensure that CLEC directory listing information is published in exactly the same form it is provided to Verizon.

⁶⁸ *Reeder Declaration* ¶¶ 8-10.

⁶⁹ *Reeder Declaration* ¶ 10.

III. VERIZON DOES NOT COMPLY WITH CHECKLIST ITEM 13

A. Legal Standard

Section 271(c)(2)(B)(xiii) of the Act requires that a BOC enter into “[r]eciprocal compensation arrangements in accordance with the requirements of section 252(d)(2).”⁷⁰ The Commission has noted that with respect to reciprocal compensation requirements under Checklist Item 13, a BOC is required to follow “states’ interpretations and requirements promulgated under their interpretation of interconnection agreements, including states’ requirements concerning Internet Service Provider (“ISP”)-bound traffic.”⁷¹

The recent Commission reevaluation of the proper treatment of intercarrier compensation of telecommunications traffic delivered to ISPs does not upset the tenor of this Commission’s rulings with respect to a BOC’s reciprocal compensation obligations in regard to existing interconnection agreements.⁷² The Commission explicitly stated that its ruling does not “alter existing contractual obligations,” and “does not preempt any state commission decision regarding compensation for ISP-bound traffic for the period prior to the effective date of the interim regime we adopt here.”⁷³

⁷⁰ 47 U.S.C. § 271(c)(2)(B)(xiii).

⁷¹ *Verizon MA 271 Order* at ¶ 215.

⁷² *See In the matters of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 and Inter-Carrier Compensation for ISP-Bound Traffic*, CC Docket Nos. 96-98 and 99-68, Order on Remand and Report and Order, FCC 01-131 (Released April 18, 2001) (the “*FCC Reciprocal Compensation Order*”).

⁷³ *Id.* at ¶ 82.

B. Verizon is Improperly Attempting to Circumvent its Reciprocal Compensation Obligations

Despite the clear language of this Commission about the obligations of BOCs regarding pre-existing reciprocal compensation obligations, Verizon is attempting to sidestep these duties and unilaterally impose its own interpretation of this Commission's ruling. Verizon's improper and illegal actions were recently derailed by the Maryland Public Service Commission ("PSC"), and this Commission should refrain from granting Verizon's Application based on its failure to comply with Checklist Item 13.

Verizon recently sent letters to CLECs stating that it would refuse to pay invoiced amounts which exceed what would be due under Verizon's interpretation of the *FCC Reciprocal Compensation Order*.⁷⁴ Verizon also stated that it did not need to amend existing interconnection agreements pursuant to change of law provisions to implement the FCC's ruling.⁷⁵ Verizon claimed that this Commission had preempted the State commissions on issues of compensation mechanisms and rates for ISP-bound traffic. In a letter to the Maryland PSC, Verizon asserted that the PSC lacked authority "either to revise its previous reciprocal compensation decision or to approve or deny amendments concerning Internet traffic."⁷⁶

The Maryland PSC repudiated Verizon's actions, finding that this Commission's Order was not "self-executing" and that as directed by this Commission, the interim compensation

⁷⁴ Maryland Public Service Commission, Letter from Executive Secretary to Counsel for Core Communications, Inc. and Verizon Maryland Inc. at 2 (June 13, 2001) ("*MD PSC Letter*"), attached hereto as Exhibit D. Plue Declaration ¶ 16-17.

⁷⁵ Plue Declaration ¶ 17.

⁷⁶ *MD PSC Letter* at 2.

regime could only be implemented through change-of-law provisions.⁷⁷ Verizon was directed to follow the proper course required under such change-of-law provisions which is to negotiate amendments to existing interconnection agreements. Verizon was also precluded from withholding reciprocal compensation payments until the amendments to the agreements are approved by the Commission.⁷⁸

In the Pennsylvania PUC proceeding addressing its Section 271 application, Verizon intimated that it planned to follow the same approach, *i.e.*, to act unilaterally to effect changes in existing reciprocal compensation arrangements.⁷⁹ The PUC deemed that such a practice would be irrelevant in regard to Checklist Item 13.⁸⁰ However, the PUC clearly failed to consider this Commission's requirement that a carrier must follow "states' interpretations and requirements promulgated under their interpretation of interconnection agreements, including states' requirements concerning ISP-bound traffic" to satisfy Checklist Item 13.⁸¹ The PUC has held that "calls to local ISPs shall be considered local and that reciprocal compensation shall be applied to all ISP traffic for all future interconnection agreements filed with the [PA PUC]."⁸² This interpretation is binding for all ISP-bound traffic exchanged by the parties prior to the effective date of the Commission's order. Thus, Verizon is responsible for payment of

⁷⁷ *Id.* at 3.

⁷⁸ *Id.*

⁷⁹ CC Docket No. 01-138, Consultative Report of the Pennsylvania Public Utility Commission at 232 (June 25, 2001) ("*Consultative Report*").

⁸⁰ *Id.* at 233, n. 605.

⁸¹ *Verizon MA 271 Order* at ¶ 215.

⁸² *Consultative Report* at 231.

reciprocal compensation at the rates established by the PUC pending renegotiation of an alternative payment arrangement and subsequent PUC approval of that agreement.

In Massachusetts, the Commission required a showing that Verizon is “providing reciprocal compensation under the obligations in its Department [MA DTE]-approved interconnection agreements and tariffs, as well as relevant Department Orders” to find compliance with Checklist Item 13.⁸³ Verizon’s current policy contravenes its obligations under existing interconnection agreements and PUC Orders, and thus violates Checklist Item 13.⁸⁴ Verizon’s policy likewise attempts to undermine state commission interpretations of its interconnection agreements, as well as state commission authority to review and approve amendments to such agreements. Accordingly, the Commission should deny Verizon’s application for failure to comply with Checklist Item 13.

⁸³ *Verizon MA 271 Order* at ¶ 216.

⁸⁴ *Plue Declaration* ¶ 17.

IV. CONCLUSION

For the foregoing reasons, Broadslate Networks, Inc., CTSI, Inc. and XO Communications, Inc. urge the Commission to deny Verizon's Application for Provision of In-Region InterLATA Services in Pennsylvania.

Respectfully submitted,



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Dated: July 11, 2001

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Application of Verizon Pennsylvania, Inc.,)	
Verizon Long Distance, Verizon Enterprises)	CC Docket No. 01-138
Solutions, Verizon Global Networks, Inc., and)	
Verizon Select Services Inc. for Authorization)	
To Provide In-Region, InterLATA Services)	
in Pennsylvania)	

EXHIBIT A

Declaration of Craig Plue on Behalf of XO Communications, Inc.